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8 **UNITED STATES DISTRICT COURT**  
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA, ) Criminal Case No. 07CR3028-WQH  
 12 )  
 13 Plaintiff, ) **UNITED STATES' RESPONSE AND**  
 14 ) **OPPOSITION TO DEFENDANT'S**  
 15 ) **MOTIONS TO:**  
 16 PAUL DAVID LATIFF, )  
 17 )  
 18 Defendant. ) **(1) COMPEL DISCOVERY AND**  
 19 ) **PRESERVE EVIDENCE;**  
 20 ) **(2) GRANT LEAVE TO FILE**  
 20 ) **FURTHER MOTIONS**  
 20 )  
 20 ) **ALONG WITH UNITED STATES'**  
 20 ) **MOTION FOR RECIPROCAL**  
 20 ) **DISCOVERY.**  
 20 )  
 20 ) Date: January 2, 2008  
 20 ) Time: 2:00 p.m.  
 20 ) Honorable: William Q. Hayes

21 Plaintiff, United States of America, by and through its counsel, Karen P. Hewitt, United States  
 22 Attorney, and Christina M. McCall, Assistant United States Attorney hereby files its Response and  
 23 Opposition to Defendant's Motions and its Motion for Reciprocal Discovery. This Response and  
 24 Opposition is based upon the files and records of the case together with the attached statement of facts  
 25 and memorandum of points and authorities.

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I

## **STATEMENT OF FACTS**

3 In October of 2007, the Drug Enforcement Agency (“DEA”) learned that Defendant, Paul David  
4 Latiff, would be traveling from the San Diego airport to the east coast, with methamphetamine taped  
5 inside his pants. On October 12, 2007, at around 5:45 p.m., DEA agents encountered Defendant in the  
6 San Diego airport and asked for permission to search Defendant’s person and belongings. Defendant  
7 granted permission to search, claiming that he had nothing on him. Agents discovered a foreign object  
8 taped inside the groin of Defendant’s pants area. When agents asked what was inside, the package,  
9 Defendant said, “you know what it is.” That object turned out to be a package of methamphetamine,  
10 weighing 183.4 grams, with a purity level of 50%, resulting in an actual amount of methamphetamine  
11 of 92 grams.

12 From Defendant's luggage, agents discovered two Federal Express shipping slips. When  
13 presented with the shipping slips, Defendant admitted that he sent methamphetamine to two people on  
14 the east coast.

15 After being read his Miranda rights, Defendant agreed to speak to the agents. Defendant  
16 admitted that he had been selling methamphetamine for a year, and that he travels to San Diego to obtain  
17 the substance.

18 On November 6, 2007, a federal grand jury for the Southern District of California returned a  
19 single-count Indictment against Defendant, charging him with knowingly and intentionally possession,  
20 with intent to distribute, 92 grams of actual methamphetamine, in violation of Title 21 U.S.C. §  
21 841(a)(1). Defendant pleaded not guilty to the Indictment on November 15, 2007.

II

**UNITED STATES' RESPONSE AND OPPOSITION TO DEFENDANT'S MOTIONS**

## A. ORDER COMPELLING DISCOVERY IS UNNECESSARY

25 \_\_\_\_\_ No Order is Required; The United States is Complying With Discovery Obligations

26 \_\_\_\_\_ The United States has produced around 60 pages of discovery as of the filing of this response.

1       The United States has complied and will continue to comply with its discovery obligations under  
2 Brady v. Maryland, 373 U.S. 83 (1963), the Jenks Act (18 U.S.C. §3500), and Federal Rule of Criminal  
3 Procedure 16. Because the United States has complied and will comply with its discovery obligations,  
4 an order to compel discovery is unwarranted and the request for such an order should be denied.

5       1.       Defendant's Statements

6       The Government recognizes its obligation under Rules 16(a)(1)(A) and 16(a)(1)(B) to provide  
7 to Defendant the substance of Defendant's oral statements and Defendant's written statements. The  
8 Government has produced all of the Defendant's statements that are known to the undersigned Assistant  
9 U.S. Attorney at this date. If the Government discovers additional oral or written statements that require  
10 disclosure under Rule 16(a)(1)(A) or Rule 16(a)(1)(B), such statements will be provided to Defendant.

11       2.       Arrest Reports, Notes and Dispatch Tapes

12       The United States has provided Defendant with all known reports related to Defendant's arrest  
13 in this case. The United States is not aware of the existence of any dispatch tapes relevant to this case.  
14 The United States will continue to comply with its obligation to provide to Defendant all reports subject  
15 to Rule 16.

16       The Government has no objection to the preservation of the handwritten notes taken by any of  
17 the Government's agents that are available at this time. See United States v. Harris, 543 F.2d 1247, 1253  
18 (9th Cir. 1976) (agents must preserve their original notes of interviews of an accused or prospective  
19 government witnesses). However, the Government objects to providing Defendant with a copy of any  
20 available rough notes at this time. Rule 16(a)(1)(A) does not require disclosure of the rough notes where  
21 the content of those notes have been accurately reflected in a type-written report. See United States v.  
22 Brown, 303 F.3d 582, 590 (5th Cir. 2002); United States v. Coe, 220 F.3d 573, 583 (7th Cir. 2000) (Rule  
23 16(a)(1)(A) does not require disclosure of an agent's notes even where there are "minor discrepancies"  
24 between the notes and a report). The Government is not required to produce rough notes pursuant to the  
25 Jencks Act, because the notes do not constitute "statements" (as defined 18 U.S.C. § 3500(e)) unless the  
26 notes (1) comprise both a substantially verbatim narrative of a witness' assertion, and (2) have been  
27 approved or adopted by the witness. United States v. Spencer, 618 F.2d 605, 606-07 (9th Cir. 1980).  
28 The rough notes in this case probably do not constitute "statements" in accordance with the Jencks Act.

1 See United States v. Ramirez, 954 F.2d 1035, 1038-39 (5th Cir. 1992) (rough notes were not statements  
 2 under the Jencks Act where notes were scattered and all the information contained in the notes was  
 3 available in other forms). The notes are not Brady material because the notes do not present any material  
 4 exculpatory information, or any evidence favorable to Defendant that is material to guilt or punishment.  
 5 Brown, 303 F.3d at 595-96 (rough notes were not Brady material because the notes were neither  
 6 favorable to the defense nor material to defendant's guilt or punishment); United States v. Ramos, 27  
 7 F.3d 65, 71 (3d Cir. 1994) (mere speculation that agents' rough notes contained Brady evidence was  
 8 insufficient). If, during a future evidentiary hearing, certain rough notes become discoverable under Rule  
 9 16, the Jencks Act, or Brady, the notes in question will be provided to Defendant.

10       3.     Brady Material

11       The United States will comply with its obligations to disclose exculpatory evidence under Brady  
 12 v. Maryland, 373 U.S. 83 (1963). Under Brady and United States v. Agurs, 427 U.S. 97 (1976), the  
 13 government need not disclose "every bit of information that might affect the jury's decision." United  
 14 States v. Gardner, 611 F.2d 770, 774-75 (9th Cir. 1980). The standard for disclosure is materiality. Id.  
 15 "Evidence is material under Brady only if there is a reasonable probability that the result of the  
 16 proceeding would have been different had it been disclosed to the defense." United States v.  
 17 Antonakeas, 255 F.3d 714, 725 (9th Cir. 2001). Impeachment evidence may constitute Brady material  
 18 "when the reliability of the witness may be determinative of a criminal defendant's guilt or innocence."  
 19 United States v. Blanco, 392 F.3d 382, 387 (9th Cir. 2004) (internal quotation marks omitted).

20       4.     404(b) Evidence

21       The United States will disclose in advance of trial the general nature of any "other bad acts"  
 22 evidence that it intends to introduce at trial pursuant to Federal Rule of Evidence 404(b), and any prior  
 23 convictions it intends to use as impeachment pursuant to Rule 609. The discovery materials include  
 24 numerous documents from Defendant's previous trips to San Diego.

25       5.     Jencks Act Material

26       The United States has or will comply with the disclosure requirements of the Jencks Act. For  
 27 purposes of the Jencks Act, a "statement" is (1) a written statement made by the witness and signed or  
 28 otherwise adopted or approved by him, (2) a substantially verbatim, contemporaneously recorded

1 transcription of the witness's oral statement, or (3) a statement by the witness before a grand jury. 18  
 2 U.S.C. § 3500(e). Notes of an interview only constitute statements discoverable under the Jencks Act  
 3 if the statements are adopted by the witness, as when the notes are read back to a witness to see whether  
 4 or not the government agent correctly understood what the witness was saying. United States v. Boshell,  
 5 952 F.2d 1101, 1105 (9th Cir. 1991) (citing Goldberg v. United States, 425 U.S. 94, 98 (1976)). By the  
 6 same token, rough notes by an agent "are not producible under the Jencks Act due to the incomplete  
 7 nature of the notes." United States v. Cedano-Arellano, 332 F.3d 568, 571 (9th Cir. 2004).

8 The United States is not aware of any dispatch tapes containing Jencks Act material in this case.

9 6. Giglio/ Henthorn Information

10 The United States will comply with the requirements of Giglio v. United States, 405 U.S. 150  
 11 (1972). The Government will also comply with United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991)  
 12 and request that all federal agencies involved in the criminal investigation and prosecution review the  
 13 personnel files of the federal law enforcement inspectors, officers, and special agents whom the  
 14 Government intends to call at trial and disclose information favorable to the defense that meets the  
 15 appropriate standard of materiality. United States v. Booth, 309 F.3d 566, 574 (9th Cir. 2002)(citing  
 16 United States v. Jennings, 960 F.2d 1488, 1489 (9th Cir. 1992). If the undersigned Assistant U.S.  
 17 Attorney is uncertain whether certain incriminating information in the personnel files is "material," the  
 18 information will be submitted to the Court for an in camera inspection and review.

19 C. LEAVE TO FILE FURTHER MOTIONS

20 The United States does not oppose Defendant's request for leave to file further motions, so long  
 21 as such motions are based on discovery not yet received by Defendant.

22 III

23 **UNITED STATES' MOTION FOR RECIPROCAL DISCOVERY**

24 Defendant has invoked Fed. R. Crim. P. 16(a) and the United States has voluntarily complied  
 25 with the requirements of Rule 16(a). Therefore, provision 16(b) of that rule, requiring reciprocal  
 26 discovery, is applicable. The United States hereby requests Defendant to permit the United States to  
 27 inspect, copy, and photograph any and all books, papers, documents, photographs, tangible objects, or  
 28 make copies of portions thereof, which are within the possession, custody or control of Defendant and

1 which he intends to introduce as evidence at trial. This request is especially important in a case where  
2 Defendant is expected to attempt to prove that he is entitled to derivative citizenship.

3        The United States further requests that it be permitted to inspect and copy or photograph any  
4 results or reports of physical or mental examinations and of scientific tests or experiments made in  
5 connection with this case, which are in the possession or control of Defendant, which he intends to  
6 introduce as evidence-in-chief at the trial or which were prepared by a witness whom Defendant intends  
7 to call as a witness. The United States also requests that the court make such orders as it deems  
8 necessary under Rule 16(d)(1) and (2) to insure that the United States receives the discovery to which  
9 it is entitled.

10       Federal Rule of Criminal Procedure 26.2 requires the production of prior statements of all  
11 witnesses, except Defendant. The time frame established by the rule requires the statement to be  
12 provided after the witness has testified, as in the Jencks Act. The United States hereby requests that  
13 Defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before trial  
14 to be set by the court. This order should include any form these statements are memorialized in,  
15 including but not limited to, tape recordings, handwritten or typed notes and/or reports.

V

## CONCLUSION

18 For the foregoing reasons, the United States respectfully requests that Defendant's motions,  
19 except where not opposed, be denied and the United States' motion for reciprocal discovery be granted.

20 DATED: December 19, 2007

Respectfully Submitted,

KAREN P. HEWITT  
United States Attorney

/s/ Christina M. McCall

CHRISTINA M. McCALL  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
PAUL DAVID LATIFF,  
Defendant.

Case No. 07CR3028-WQH

## **CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that:

I, CHRISTINA M. McCALL, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101.

I am not a party to the above-entitled action. I have caused service of RESPONSE AND OPPOSITION TO DEFENDANT'S MOTION TO COMPEL DISCOVERY on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Paul Neuharth, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 19, 2007.

*/s/ Christina M. McCall*

CHRISTINA M. McCALL